

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

VIRGINIA BELL)	
Claimant)	
VS.)	
)	
ST. FRANCIS HOSPITAL)	Docket No. 242,500
Respondent)	
Self-Insured)	

ORDER

Respondent appealed Administrative Law Judge Bryce D. Benedict's June 8, 1999, preliminary hearing Order for Medical Treatment.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment and payment of unauthorized medical expense. Respondent contends claimant failed to prove she suffered an accidental injury while employed by the respondent and failed to prove she gave respondent timely notice of accident or served respondent with a timely written claim. Respondent further questions claimant's need for medical treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the respondent's brief, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review the preliminary hearing issues regarding accidental injury, timely notice, and timely written claim. But it does not have jurisdiction to review the preliminary hearing issue regarding claimant's need for medical treatment. See K.S.A. 1998 Supp. 44-534a.

Claimant alleges she injured her low back while performing lifting activities at work for the respondent from 1997 through March 12, 1999, her last day worked. During this period of accident, claimant was employed as a staff nurse on the orthopedic ward of respondent's hospital.

Claimant testified her job duties required her to lift patients either while they were in bed or transfer them from the bed and then back to the bed. She received treatment for low-back pain at the respondent's emergency room on June 11, 13, and 15 of 1998. Respondent's June 11, 1998, medical treatment record indicates that claimant gave a history of symptoms aggravated by lifting and the pain began after her work shift. The June 13, 1998, medical record indicates injury allegedly occurred at work while the June 15, 1998, medical record indicates that claimant was better and the injury was not related to work.

Respondent then referred claimant for further examination and treatment to Mahendra Patel, M.D., who saw claimant on three occasions in June 1998. He took claimant off work, prescribed medication, and physical therapy. Dr. Patel returned claimant to work on June 25, 1998, without permanent restrictions, but cautioned her in regard to her posture when moving patients at work. The last time Dr. Patel's medical records indicate that claimant was seen for back pain was on October 29, 1998. During this visit, the doctor advised claimant to continue taking pain medication and prescribed Percocet.

Claimant testified her back continued to worsen as she performed the heavy lifting activities at work. Finally, on March 12, 1999, she terminated her full-time employment with respondent and only continued on a call-as-needed basis. Claimant testified that the reason she terminated her employment was because she found a job at a nursing home that did not require the heavy lifting.

The first record of claimant reporting a work-related accident to her supervisor is contained in an Employee Work Injury Report dated January 12, 1999. At that time, claimant reported that the heavy lifting she did at work over a period of time caused injury to her back. Claimant also testified she told her supervisor on numerous occasions that the heavy lifting was killing her back.

Respondent argues that claimant injured her back at work on one occasion in June of 1998. Respondent asserts there is no evidence that she suffered further injury to her back after that date. Therefore, since claimant did not notify respondent of the injury until January of 1999 and further did not file a claim for workers compensation benefits until March 1999, her claim is barred. See K.S.A. 44-520 and K.S.A. 44-520a.

The Appeals Board disagrees with the respondent's arguments. Claimant has established through her testimony that her back became symptomatic from lifting at work in June of 1998. She received medical treatment for her back symptoms and was taken off work. Dr. Patel's medical records indicate that she improved and was returned to work on June 25, 1998, without restrictions. After claimant returned to work, she then saw Dr. Patel again for further back complaints on October 29, 1998. At that time, Dr. Patel prescribed additional pain medication.

At claimant attorney's request, claimant was examined by orthopedic surgeon Sergio Delgado, M.D., on March 29, 1999. Dr. Delgado's report containing the results of the examination was admitted at the preliminary hearing. His impression was chronic low-back pain. He recommended additional diagnostic studies and treatment consisting of anti-inflammatories, muscle relaxants, possible lumbar epidural steroid injections, and a possible referral for disc surgery.

The Appeals Board concludes that the Administrative Law Judge's preliminary hearing Order should be affirmed. Claimant has proven she initially injured her low back at work in June of 1998 and continued to aggravate her low-back injury until she quit work on March 12, 1999. A worker's injury is compensable if it is aggravated or accelerated by the worker's regular work activities.¹ The date of accident in a case where claimant sustains injury from repetitive work activities is the last day claimant left work because of the injury². In this case, the Appeals Board finds, for preliminary hearing purposes, that claimant's date of accident is March 12, 1999, her last day that she worked for the respondent.

Accordingly, the Appeals Board concludes that claimant gave respondent timely notice of the accident and served respondent with a timely written claim for benefits. Claimant testified that she told her supervisor before she quit working on March 12, 1999, that her lifting activities at work were killing her back. Also, claimant completed an Employee Work Injury Report on January 12, 1999, that stated her lifting activities were injuring her back. The preliminary hearing record contains a copy of a timely written claim for workers compensation benefits that was served on the respondent on March 6, 1999, before claimant's March 12, 1999, last day worked.

¹Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978).

²Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Bryce D. Benedict's June 8, 1999, preliminary hearing Order for Medical Treatment, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July 1999.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Evelyn Z. Wilson, Topeka, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director